

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Ex
Rel. EDMUND G. BROWN, JR., ATTORNEY
GENERAL,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY;
EDWARD DeMARCO, in his capacity as
Acting Director of FEDERAL HOUSING
FINANCE AGENCY; FEDERAL HOME LOAN
MORTGAGE CORPORATION; CHARLES E.
HALDEMAN, Jr., in his capacity as
Chief Executive Officer of FEDERAL
HOME LOAN MORTGAGE CORPORATION;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION; MICHAEL J. WILLIAMS, in
his capacity as Chief Executive
Officer of FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendants.

No. 10-cv-03084 CW

ORDER REGARDING
SONOMA COUNTY'S
MOTION FOR A
PRELIMINARY
INJUNCTION IN THE
SONOMA COUNTY
ACTION, 10-cv-
03270
(Docket No. 33)

SONOMA COUNTY and PLACER COUNTY,

Plaintiffs,

v.

FEDERAL HOUSING FINANCE AGENCY;
EDWARD DeMARCO, in his capacity as
Acting Director of FEDERAL HOUSING
FINANCE AGENCY; FEDERAL HOME LOAN
MORTGAGE CORPORATION; CHARLES E.
HALDEMAN, Jr., in his capacity as
Chief Executive Officer of FEDERAL

No. 10-cv-03270 CW

HOME LOAN MORTGAGE CORPORATION;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION; MICHAEL J. WILLIAMS, in
his capacity as Chief Executive
Officer of FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendants.

SIERRA CLUB,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY;
EDWARD DeMARCO, in his capacity as
Acting Director of FEDERAL HOUSING
FINANCE AGENCY,

Defendants.

CITY OF PALM DESERT,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION; FEDERAL HOME LOAN
MORTGAGE CORPORATION,

Defendants.

No. 10-cv-03317 CW

No. 10-cv-04482 CW

California, various local governments and the Sierra Club have filed the above-captioned lawsuits against the Federal Housing Finance Agency (FHFA) and related entities, after the FHFA issued a statement, and the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) published announcements, which allegedly thwarted Property Assessed Clean Energy (PACE) programs.¹ Through these programs, state and local governments sought to finance energy conservation projects using city and county tax assessments against the retrofitted properties. The American Recovery and Reinvestment Act of 2009 provided funding to support these programs, and the Department of Energy has assumed responsibility for allocating such funding through grants. Plaintiffs seek declaratory and injunctive relief, pressing claims for violations of the Administrative Procedures Act, the National Environmental Policy Act, various state laws and the United States Constitution.

In the Sonoma County action, 10-cv-03270, Sonoma County has moved for a preliminary injunction. Docket No. 33. The motion seeks a court order enjoining Defendants from:

1. Giving any force or effect in Sonoma County to the FHFA's July 6, 2010 "Statement on Certain Energy Retrofit Loan Programs" and any actions taken by Freddie Mac or Fannie Mae in response to

¹ Three similar cases are pending in federal district courts in Florida and New York. The FHFA has moved the Judicial Panel on Multidistrict Litigation to centralize all seven actions. The three additional actions are The Town of Babylon v. FHFA et. al., 2:10-cv-04916 (E.D.N.Y.); Natural Resource Defense Council, Inc. v. Federal Housing Finance Authority et al., 1:10-cv-07647-SAS (S.D.N.Y.); and Leon County v. FHFA et al., 4:10-cv-00436-RH (N.D.Fla.).

1 the FHFA's July 6, 2010 Statement, including but not limited to,
2 the actions taken by Freddie Mac and Fannie Mae on August 31, 2010.

3 2. Interpreting the Uniform Security Instrument as prohibiting
4 Sonoma County Energy Independence Program (SCEIP) assessments,
5 whether obtained before or after July 6, 2010;

6 3. Issuing any further directives, statements, or guidance
7 that characterize SCEIP assessments as loans or threats to the
8 safety and soundness of Freddie Mac, Fannie Mae and the Home Loan
9 Banks; and

10 4. Treating SCEIP assessments differently than any other
11 assessments or property taxes imposed pursuant to state law.
12 California filed an amicus brief in support of Sonoma County's
13 motion. Docket No. 65. The motion was argued on December 2, 2010.

14 The Court is inclined to deny Sonoma County's motion. Sonoma
15 is not likely to succeed on the merits to obtain the broad relief
16 it requests. Nor does the balance of hardships tip sharply in its
17 favor, given that continued uncertainty, even if preliminary relief
18 were granted, is unlikely to be reassuring to Sonoma County
19 residents who have applied for the program, energy-retrofitting
20 businesses, and financial institutions.

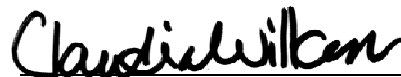
21 However, the Court would entertain a narrower request for
22 relief, such as an order that, although not being required in the
23 interim to withdraw their challenged announcements, Defendants
24 proceed to initiate the notice and comment process while this
25 lawsuit is pending. Plaintiffs' likelihood of success on their
26 Administrative Procedure Act claims for notice and comment is
27 greater than on their other claims. Complying with a preliminary
28

1 order such as this may not cause great hardship to Defendants, and
2 might even serve a beneficial purpose. On the other hand, delay in
3 beginning the notice and comment process, if such is eventually
4 required, could cause a hardship to Sonoma County.

5 Because this form of preliminary relief was not requested in
6 Sonoma County's motion, the Court allows Defendants to address it.
7 Defendants may not reiterate their arguments about the merits of
8 Plaintiffs' case, but may address the balance of hardships that
9 would be incurred by a preliminary injunction requiring them to
10 begin the notice and comment process, without being required to
11 withdraw their announcements. Defendants may file a brief of not
12 more than ten pages on January 6, 2011. Sonoma may respond with a
13 brief of the same length, addressing the same issue, on January 13,
14 2010. The matter will be decided on the papers.

15
16 IT IS SO ORDERED.

17
18 Dated: December 20, 2010



CLAUDIA WILKEN
United States District Judge